

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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JUN - 4 1997

In the Matter of)

NYNEX and Ameritech Petitions for)
Forbearance from Application of)
Section 272 of the Communications Act)
of 1934, as Amended, to Previously)
Authorized Services)

FEDERAL COMMUNICATIONS COMMISSION
OFFICE OF SECRETARY

CC Docket No. 96-149

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COMMENTS OF MCI TELECOMMUNICATIONS CORPORATION
ON PETITIONS FOR FORBEARANCE

Pursuant to the revised Public Notice released in this docket on May 14, 1997,¹ MCI Telecommunications Corporation (MCI), by its undersigned attorneys, submits these comments on the petitions filed in this docket by NYNEX and Ameritech for forbearance from the application of Section 272 of the Communications Act to their E911 services.² As explained below, application of nondiscrimination safeguards equivalent to the nondiscrimination requirements of Section 272(c)(1) and (e) to the Bell Operating Companies' (BOCs') E911 services is necessary for the protection of competition and the public interest.

¹ Pleading Cycle Established for Comments on NYNEX and Ameritech Petitions for Forbearance from Application of Section 272 of the Act to Previously Authorized Services, CC Docket No. 96-149, DA 97-1022 (released May 14, 1997).

² Ameritech's Amended and Restated Petition for Forbearance (filed May 13, 1997) and NYNEX Petition for Forbearance (filed May 6, 1997). Ameritech also seeks such relief for its Telecommunications Relay Services.

Introduction

As the BOCs acknowledge in their petitions for forbearance under Section 10 of the Communications Act, 47 U.S.C. § 160, previously authorized interLATA information services, such as their E911 services, are subject to the separation and nondiscrimination requirements of Section 272. Section 10 requires the Commission to forbear from applying any provision of the Act if it determines that: enforcement of such provision is not necessary to ensure that the charges, practices, classifications, or regulations by, for, or in conjunction with a carrier or service are just and reasonable and not unreasonably discriminatory; enforcement of such provision is not necessary for the protection of consumers; and forbearance is consistent with the public interest. 47 U.S.C. § 160(a).

The petitioners assert that provision of their E911 services on an unseparated basis has already been found to be in the public interest and otherwise meets the criteria of Section 10. They argue that application of the Section 272 separation requirements to these services will be disruptive and will increase the cost of providing them, to the detriment of consumers.

A. The Petitions Must be Denied as to the Nondiscrimination Requirements of Section 272

As a preliminary matter, it is extremely doubtful that forbearance from the nondiscrimination provisions of Section 272, or, for that matter, any nondiscrimination requirements, would

ever be appropriate for a dominant carrier in any conceivable circumstances. As pointed out above, one of the requirements for the granting of a request for forbearance from the application of a provision of the Communications Act is that "enforcement of such ... provision is not necessary to ensure that ... practices ... by [a] ... carrier ... are not unjustly or unreasonably discriminatory." 47 U.S.C. § 160(a)(1). Since the marketplace cannot be relied upon to prevent unjust or unreasonable discrimination by a dominant carrier, and, particularly, a carrier controlling the local exchange network, it is inconceivable that there would ever be a situation in which enforcement of a nondiscrimination requirement would not be "necessary to ensure that" a BOC's practices "are not unjustly or unreasonably discriminatory." Because of this inherent contradiction in granting forbearance from the application of any nondiscrimination requirements to a BOC, no BOC petition for forbearance from the nondiscrimination requirements of Section 272(c)(1) and (e) could legally be granted.

It is difficult to tell whether the two petitions at issue here seek forbearance from the application of both the nondiscrimination and separation requirements of Section 272 or only the latter. They only address the separation requirements, but generally request forbearance from the application of "the requirements of § 272,"³ suggesting both the separation and nondiscrimination requirements. To the extent that they seek

³ Ameritech Pet. at 1.

forbearance as to the requirements of Section 272(c)(1) and (e), they must be denied.

It has been pointed out previously that the nondiscrimination requirements of Section 272 are framed in terms of equality between the separated affiliate and other entities and thus cannot be literally applied to the unseparated provision of interLATA services.⁴ Thus, it would theoretically be necessary to require separation of the E911 services from the BOCs' local exchange services simply in order to apply the nondiscrimination requirements of Section 272. The BOCs would no doubt argue that separation would be too disruptive and that it is therefore necessary to maintain unseparated E911 services even if that means that the nondiscrimination requirements of Section 272 cannot be applied.

It is crucial, however, that nondiscrimination requirements equivalent to those in Sections 272(c)(1) and (e) be imposed on the BOCs' provision of E911 services. As the Commission is aware, MCI is under a legal obligation to provide emergency operator services on an interLATA basis and thus requires nondiscriminatory access to the emergency numbers contained in the BOCs' (as well as other incumbent local exchange carriers') E911 databases and used in the provision of E911 services as well as the ability to upload MCI's customer records into E911

⁴ See Reply Comments of US West, Inc. at 3, Implementation of the Non-Accounting Safeguards of Sections 271 and 272 of the Communications Act of 1934, as amended, CC Docket No. 96-149 (filed March 17, 1997).

databases for purposes of delivering 911 calls. All of the public safety concerns cited by the BOCs apply equally to MCI's provision of interLATA emergency operator services, requiring that MCI have access to emergency response agency telephone numbers to support those legally mandated MCI services.

Such nondiscriminatory access to emergency numbers is also required by Section 251 of the Act. The First Interconnection Order⁵ held that E911 is one of the capabilities included within the local switching element that an incumbent LEC must make available on an unbundled basis upon request to a telecommunications carrier under Section 251(c)(3).⁶ Moreover, incumbent LECs are required "to provide access and unbundled elements that are at least equal-in-quality to what the incumbent LECs provide themselves...."⁷ Thus, an incumbent LEC must make available to competing providers nondiscriminatory access to the emergency numbers in its E911 databases that is at least equivalent to the ILEC's own access. Finally, as other BOCs have pointed out, provision to competitive providers of nondiscriminatory access to E911 service is a condition of long

⁵ First Report and Order, Implementation of the Local Competition Provisions in the Telecommunications Act of 1996, CC Docket No. 96-98, Interconnection between Local Exchange Carriers and Commercial Mobile Radio Service Providers, CC Docket No. 95-185, FCC 96-235 (released Aug. 8, 1996).

⁶ Id. at ¶¶ 410-12.

⁷ Id. at ¶ 313.

distance entry under Section 271(c)(2)(B)(vii)(I).⁸

Accordingly, it is necessary to apply nondiscrimination requirements equivalent to those in Section 272(c)(1) and (e) to the emergency numbers used in the BOCs' provision of E911 services. The petitioners must therefore be required to treat all other entities as they treat themselves for such purposes, at the same terms and conditions and on an equally timely basis, and at the same imputed charges.

B. Conclusion

Accordingly, these petitions should not be granted as to the nondiscrimination requirements of Section 272(c)(1) and (e), since they, or equivalent requirements applicable to unseparated E911 services, are necessary to provide the nondiscriminatory access to emergency numbers in the E911 databases that is so

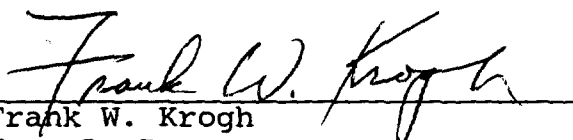
⁸ See, e.g., Bell Atlantic Petition for Forbearance at 5 n.11, CC Docket No. 96-149 (filed March 7, 1997).

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necessary for MCI and other IXCs to meet their public interest obligations and for the development of full local competition.

Respectfully submitted,

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Dated: June 4, 1997

CERTIFICATE OF SERVICE

I, Sylvia Chukwuocha, do hereby certify that a true copy of the foregoing "COMMENTS" was served this 4th day of June, 1997, by hand delivery or first class mail, postage prepaid, upon each of the following parties:

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